No. 17-43

In the Supreme Court of the United States

LOS ROVELL DAHDA AND ROOSEVELT RICO DAHDA,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

JOINT APPENDIX
VOLUME 1 OF 2 (PAGES 1-92)

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PETITION FOR A WRIT OF CERTIORARI FILED: APRIL 25, 2017
CERTIORARI GRANTED: OCTOBER 16, 2017

TABLE OF CONTENTS

Page

VOLUME 1

Court of appeals docket entries 1
Court of appeals docket entries 5
District court docket entries 9
District court docket entries 19
Excerpts from suppression hearing transcript (Mar. 25, 2014) 32
Excerpts from suppression hearing transcript (Mar. 26, 2014) 36
Excerpts from suppression hearing transcript (Mar. 26, 2014) 50
Excerpts from suppression hearing transcript (Mar. 26, 2014) 53
Excerpts from suppression hearing transcript (Mar. 26, 2014) 64
Criminal judgment for Los Dahda (Oct. 5, 2015) 68
Criminal judgment for Roosevelt Dahda (Nov. 13, 2015) 80

VOLUME 2 (SEALED)

Wiretap order (Jan. 4, 2012) 93
Wiretap order (Jan. 19, 2012) 101
Wiretap order (Jan. 20, 2012) (amended) 110
Wiretap order (Feb. 17, 2012) 120
Wiretap order (Mar. 12, 2012) 128
Wiretap order (Mar. 20, 2012) 136
Wiretap order (Mar. 23, 2012) 145
Wiretap order (Apr. 5, 2012) 154
Wiretap order (Apr. 25, 2012) 163
Wiretap order (May 4, 2012) 170

The following opinions, decisions, judgments, and orders have been omitted in printing the joint appendix because they appear as appendices to the petition for certiorari as follows:

Appendix A:	Court of appeals opinion in *United States* v. *Los Rovell Dahda*, Apr. 4, 2017
Appendix B:	Court of appeals opinion in *United States* v. *Roosevelt Rico Dahda*, Apr. 4, 2017
Appendix C:	District court opinion, Apr. 16, 2014
Appendix D:	Magistrate report and recommendation, Apr. 2, 2014

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 15-3236

UNITED STATES OF AMERICA, Plaintiff-Appellee,

v.

LOS ROVELL DAHDA,
Defendant-Appellant.

DOCKET ENTRIES

DATE	PROCEEDINGS
10/06/2015	[10308072] Criminal case docketed. Preliminary record filed. DATE RECEIVED: 10/06/2015. Docketing statement, designation of record, transcript order form, appointment motion and notice of appearance due on 10/20/2015 for Los Rovell Dahda; notice of appearance due on 10/20/2015 for United States of America. [15-3236] [Entered: 10/06/2015 09:56 AM]
10/20/2015	[10312402] Designation of record filed by Appellant Los Rovell Dahda. Served on 10/20/2015. Manner of Service: email. [15-3236]

DATE	PROCEEDINGS
	RWJ [Entered: 10/20/2015 03:17 PM]
	* * * * *
10/26/2015	[10313857] Record on appeal filed. No. of Volumes: 2 (Volume I - Pleadings & Transcript and Volume II - SEALED Pleadings). Appellant's brief due on 12/07/2015 for Los Rovell Dahda. [15-3236] [Entered: 10/26/2015 02:26 PM]
	* * * * *
12/28/2015	[10329828] Designation of record filed by Appellant Los Rovell Dahda. Served on 12/28/2015. Manner of Service: email. [15-3236] REB [Entered: 12/28/2015 01:58 PM]
	* * * * *
02/09/2016	[10341497] Supplemental record on appeal filed. No. of Volumes: 2 (Supplemental Volume I - Pleadings and Supplemental Volume II - Transcripts). [15-3236] [Entered: 02/09/2016 08:28 AM]
	* * * * *
05/20/2016	[10371253] Appellant/Petitioner's brief filed by Los Rovell Dahda. 7 paper copies to be provided to the court. Served on 05/20/2016 by email. Oral argument requested?

DATE	PROCEEDINGS
	Yes. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [15-3236] REB [Entered: 05/20/2016 07:46 PM]
	* * * * *
08/17/2016	[10397443] Supplemental record on appeal filed pursuant to the court's 08/17/2016 order. No. of Volumes: 1 (Supplemental Volume III - Trial exhibits 627 through 905). [15-3236] [Entered: 08/17/2016 12:58 PM]
08/24/2016	[10399353] Appellee/Respondent's brief filed by United States of America. 7 paper copies to be provided to the court. Served on: 08/24/2016. Manner of service: email. Oral argument requested? Yes. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [15-3236] CNC [Entered: 08/24/2016 11:00 AM]
	* * * * *
09/26/2016	[10408484] Appellant/Petitioner's reply brief filed by Los Rovell Dahda. 7 paper copies to be provided to the court. Served on 09/26/2016. Manner of Service: email. This pleading complies with all required (privacy, paper copy

DATE	PROCEEDINGS
	and virus) certifications: Yes. [15-3236] REB [Entered: 09/26/2016 02:22 PM]
	* * * * *
01/19/2017	[10437538] Case argued by Rick Bailey for the Appellant; Carrie Capwell for the Appellee; and submitted to Judges Lucero, Gorsuch and Bacharach. [15-3236] [Entered: 01/19/2017 11:37 AM]
	* * * * *
01/27/2017	[10440128] Supplemental record on appeal filed. No. of Volumes: 2 – Government's (SEALED) trial exhibits 1 - 30. (Supplemental Volumes 4 and 5). [15-3236] [Entered: 01/27/2017 02:53 PM]
04/04/2017	[10456614] Affirmed in part, reversed in part, and remanded. Terminated on the merits after oral hearing. Written, signed, published; Judges Lucero, concurring and Bacharach, authoring judge. Mandate to issue. [15-3236] [Entered: 04/04/2017 11:08 AM]
04/04/2017	[10456615] Judgment for opinion filed. [15-3236] [Entered: 04/04/2017 11:10 AM]
04/26/2017	[10462320] Mandate issued. [15-3236] [Entered: 04/26/2017 08:25 AM]

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 15-3237

UNITED STATES OF AMERICA, Plaintiff-Appellee,

v.

ROOSEVELT RICO DAHDA, Defendant-Appellant.

DOCKET ENTRIES

DATE	PROCEEDINGS
10/07/2015	[10308438] Criminal case docketed. Preliminary record filed. DATE RECEIVED: 10/07/2015. Docketing statement, designation of record, transcript order form, appointment motion and notice of appearance due on 10/21/2015 for Roosevelt Rico Dahda; notice of appearance due on 10/21/15 United States of America. [15-3237] [Entered: 10/07/2015 10:20 AM]
	* * * * *
10/20/2015	[10312314] Designation of record filed by Appellant Roosevelt Rico Dahda. Served on 10/20/2015. Manner of Service: email. [15-3237]

DATE	PROCEEDINGS
	MLB [Entered: 10/20/2015 01:44 PM]
	* * * * *
11/13/2015	[10318831] Record on appeal filed. No. of Volumes: 5 (Volume I - Pleadings; Volumes II and III - Transcripts; Volume IV - SEALED Pleadings; and Volume V - Government Sentencing Exhibits). Appellant's brief due on 12/23/2015 for Roosevelt Rico Dahda. –[Edited 11/18/2015 by MB to correct revised attachment][15-3237] [Entered: 11/13/2015 08:27 AM]
11/16/2015	[10319276] Supplemental record on appeal filed. No. of Volumes: 2, Comments: Vol I - Pleadings; Vol II - Sealed Pleadings. [15-3237] [Entered: 11/16/2015 09:18 AM]
	* * * * *
11/25/2015	[10322239] Supplemental record on appeal filed. No. of Volumes: 1, Comments: Sup Vol 3 - pleadings. [15-3237] [Entered: 11/25/2015 08:52 AM]
	* * * * *
01/14/2016	[10334504] Supplemental record on appeal filed. Vol. 4 - Containing government's trial exhibits, jury instructions, and verdict. [15-3237] [Entered: 01/14/2016 10:35 AM]

DATE	PROCEEDINGS
01/22/2016	[10336833] Appellant/Petitioner's brief filed by Roosevelt Rico Dahda. 7 paper copies to be provided to the court. Served on 01/22/2016 by email. Oral argument requested? Yes. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [15-3237] MLB [Entered: 01/22/2016 01:48 PM]
	* * * * *
04/27/2016	[10363147] Appellee/Respondent's brief filed by United States of America. 7 paper copies to be provided to the court. Served on: 04/27/2016. Manner of service: email. Oral argument requested? Yes. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [15-3237] CNC [Entered: 04/27/2016 01:36 PM]
	* * * * *
05/31/2016	[10373595] Appellant/Petitioner's reply brief filed by Roosevelt Rico Dahda. 7 paper copies to be provided to the court. Served on 05/31/2016. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [15-3237] --[Edited 06/07/2016 by SLS

DATE	PROCEEDINGS
	to remove docket entry from 15-3236.] MLB [Entered: 05/31/2016 09:14 AM]
	* * * * *
01/19/2017	[10437541] Case argued by Mark Bennett for the Appellant; Carrie Capwell for the Appellee; and submitted to Judges Lucero, Gorsuch and Bacharach. [15-3237] [Entered: 01/19/2017 11:42 AM]
	* * * * *
01/27/2017	[10440018] Supplemental record on appeal filed. No. of Volumes: 2. Supplemental Volumes IV & V - SEALED Government Exhibits. [15-3237] --[Edited 01/27/2017 by SLS to replace transmittal letter.] [Entered: 01/27/2017 11:45 AM]
04/04/2017	[10456618] Affirmed and Remanded. Terminated on the merits after oral hearing. Written, signed, published. Judges Lucero and Bacharach (authoring). Mandate to issue. [15-3237] [Entered: 04/04/2017 11:15 AM]
04/04/2017	[10456631] Judgment for opinion filed. [15-3237] [Entered: 04/04/2017 11:34 AM]
04/26/2017	10462324] Mandate issued. [15-3237] [Entered: 04/26/2017 08:29 AM]

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

No. 12 cr 20083-01

UNITED STATES, Plaintiff,

v.

LOS ROVELL DAHDA,
Defendant.

DOCKET ENTRIES

DATE	NO.	PROCEEDINGS
06/11/2012	1	SEALED COMPLAINT as to Los Rovell Dahda (1), Roosevelt Rico Dahda (2), Sadie Jolynn Brown (3), Justin Cherif Pickel (4), David James Essman (5), Amos Moses Hurst (6), Phillip Villereal Alarcon (7), Jeffery David Paiva (8), Mark Lee Romero (9), Samuel Villeareal, III (10), Peter Park (11), Wayne Suhan Swift (12), Charles Thomas Kreisler (13), James Michael Soderling (14), Simon Andrew Tyson (15), Trent Jordan Percival (16), Chad William Pollard (17), Jason Marcus Hansen (18), Daniel Mark Sieber (19), Justin Jerome Mercer

DATE	NO.	PROCEEDINGS
		(20), Jacob Paul Forbes (21), Chad Eugene Bauman (22), Carey Lynn Willming (23), Michael Shane Witt (24), Stephen Mallsion Rector (25). (Sealed User KAO) Modified on 6/13/2012 to unseal per Notice of Arrest. (kao) [2:12-mj-08126-JPO] (Entered: 06/12/2012)
		* * * * *
07/11/2012	192	SEALED INDICTMENT (unsealed upon arrest) as to Los Rovell Dahda (1) on counts 1, 3, 22, 25, 29-30, 31, 33, 35, 36-37, 38, 40-41, 42, 44-45, 47, 48, 72, 84, and 87; as to Roosevelt Rico Dahda (2) on counts 1, 41, 42, 44, 46, 48, 51-52, 54, 55, 69, and 72; as to Sadie Jolynn Brown (3) on counts 1, 42, 52-54, and 55; as to Justin Cherif Pickel (4) on counts 1, 29, 36, 42, 69, and 72; as to David James Essman (5) on counts 1 and 37; as to Amos Moses Hurst (6) on counts 1, 40, and 42; as to Phillip Villereal Alarcon (7) on counts 1, 38, 42, and 45; as to Jeffery David Paiva (8) on counts 1 and 42; as to Mark Lee Romero (9) on counts 1, 46, 53, and 55; as to Samuel Villeareal, III (10) on counts 1, 16, and 51; as to Peter Park (11) on counts 1, 42, 48, 63-66, 67, 68, 70, 71, 73, 74, 75, 77, 78, 79-80, 81, 82-83, 84-85, 86, 87,

DATE	NO.	PROCEEDINGS
		88-91, 93, and 100; as to Wayne Suhan Swift (12) on counts 1, 42, 63, 67, 77, 84, 86, and 87; as to Charles Thomas Kreisler (13) on counts 1, 66, 67, and 77; as to James Michael Soderling (14) on counts 1, 26, 27, 28, 67, 70, 77, 84, 85, and 93; as to Simon Andrew Tyson (15) on counts 1 and 65; as to Trent Jordan Percival (16) on counts 1, 78, 79-80, 83, 95, and 96; as to Chad William Pollard (17) on counts 1, 79-80, and 83; as to Jason Marcus Hansen (18) on counts 1, 75, and 89; as to Daniel Mark Sieber (19) on counts 1, 74, 88, 90-91, and 97; as to Justin Jerome Mercer (20) on counts 1, 80, 81, and 82; as to Jacob Paul Forbes (21) on counts 1, 59, and 64; as to Chad Eugene Bauman (22) on counts 1, 2, 3, 4-6, 7, 8, 9, 10, 11, 15, 17, 19, 20, 22-23, 24, 32, 34, 39, 43, 49, 50, 56, 57, 58, 60-61, 62, 76, 92, 94, and 101; as to Carey Lynn Willming (23) on counts 1, 2, 12-14, and 57; as to Michael Shane Witt (24) on counts 1 and 58; as to Stephen Mallsion Rector (25) on counts 1, 2, 18, and 56; as to Michael J. Berry (26) on counts 1, 21, and 98; as to Adam Christiansen (27) on count 1; as to Aaron C. Gunderson (28) on counts 1, 92, and 101; as to Nathan Wallace (29) on counts 1, 42, 47, 48, and 99; as to

DATE	NO.	PROCEEDINGS
		Ryan Kearns (30) on counts 1 and 9; as to Karl Havener (31) on counts 1 and 9; as to Damien J. Mick (32) on counts 1, 62, and 94; as to Joshua Simpson (33) on counts 1 and 10; as to Sarah Soderling (34) on counts 1 and 93; and as to Elizabeth Dominique Watson (35) on counts 1, 71, and 73. (mg) (Counts Corrected as to Defendants Swift (12) and Soderling (14) on 7/12/2012. (mg)) (Entered: 07/12/2012)
		* * * * *
10/31/2012	462	SEALED SUPERSEDING INDICTMENT (unsealed upon arrest) as to Los Rovell Dahda (1) on counts 1s, 3s, 23s, 26s, 30s-31s, 32s, 34s, 36s, 37s-39s, 41s-42s, 43s, 45s-46s, 48s, 49s, 73s, 85s, and 88s; as to Roosevelt Rico Dahda (2) on counts 1s, 42s, 43s, 45s, 47s, 49s, 52s-53s, 55s, 56s, 70s, and 73s; as to Sadie Jolynn Brown (3) on counts 1s, 43s, 53s-55s, and 56s; as to Justin Cherif Pickel (4) on counts 1s, 30s, 37s, 43s, 70s, and 73s; as to David James Essman (5) on counts 1s and 38s; as to Amos Moses Hurst (6) on counts 1s, 41s, and 43s; as to Phillip Villereal Alarcon (7) on counts 1s, 39s, 43s, and 46s; as to Jeffery David Paiva (8) on counts 1s and 43s; as to Mark Lee Romero (9) on counts 1s,

DATE	NO.	PROCEEDINGS
		47s, 54s, and 56s; as to Samuel Villeareal, III (10) on counts 1s, 17s, and 52s; as to Peter Park (11) on counts 1s, 43s, 49s, 64s- 67s, 68s, 69s, 71s, 72s, 74s, 75s, 76s, 78s, 79s, 80s, 81s, 82s, 83s, 84s, 85s, 86s, 87s, 88s, 89s, 90s, 91s-92s, 94s, and 101s; as to Wayne Suhan Swift (12) on counts 1s, 43s, 64s, 68s, 78s, 85s, 87s, and 88s; as to Charles Thomas Kreisler (13) on counts 1s, 67s, 68s, and 78s; as to James Michael Soderling (14) on counts 1s, 27s, 28s, 29s, 68s, 71s, 78s, 85s, 86s, and 94s; as to Simon Andrew Tyson (15) on counts 1s and 66s; as to Trent Jordan Percival (16) on counts 1s, 79s, 80s, 81s, 84s, 96s, and 97s; as to Chad William Pollard (17) on counts 1s, 80s, 81s, and 84s; as to Jason Marcus Hansen (18) on counts 1s, 76s, and 90s; as to Daniel Mark Sieber (19) on counts 1s, 75s, 89s, 91s-92s, and 98s; as to Justin Jerome Mercer (20) on counts 1s, 81s, 82s, and 83s; as to Jacob Paul Forbes (21) on counts 1s, 60s, and 65s; as to Chad Eugene Bauman (22) on counts 1s, 2s, 3s, 5s-6s, 7s-8s, 9s, 10s, 11s, 12s, 16s, 18s, 20s, 21s, 23s, 24s, 25s, 33s, 35s, 40s, 44s, 50s, 51s, 57s, 58s, 59s, 61s-62s, 63s, 77s, 93s, 95s, and 102s; as to Carey Lynn Willming (23) on counts 1s,

DATE	NO.	PROCEEDINGS
		2s, 13s-15s, and 58s; as to Michael Shane Witt (24) on counts 1s and 59s; as to Stephen Mallsion Rector (25) on counts 1s, 2s, 19s, and 57s; as to Michael J. Berry (26) on counts 1s, 22s, and 99s; as to Adam Christiansen (27) on count 1s; as to Aaron C. Gunderson (28) on counts 1s, 93s, and 102s; as to Nathan Wallace (29) on counts 1s, 43s, 48s, 49s, and 100s; as to Ryan Kearns (30) on counts 1s and 10s; as to Karl Havener (31) on counts 1s and 10s; as to Damien J. Mick (32) on counts 1s, 63s, and 95s; as to Joshua Simpson (33) on counts 1s and 11s; as to Sarah Soderling (34) on counts 1s and 94s; as to Elizabeth Dominique Watson (35) on counts 1s, 72s, and 74s; as to Jean Francois Quintin (36) on counts 1 and 4; as to Steven Stegall (37) on counts 1 and 103; as to David G. Hale (38) on count 1; as to Henry McCusker (39) on count 1; as to John Paul McMillan (40) on counts 1, 27, and 94; as to Erin M. Keller (41) on count 1; as to Jeffrey Wall (42) on count 1; and as to Richard W. Smith, Jr. (43) on count 1. (mg) (Entered: 11/06/2012)

* * * * *

DATE	NO.	PROCEEDINGS
01/02/2014	1143	MOTION to Suppress Contents of Communications Intercepted Pursuant to Orders Insufficient on Their Face by Los Rovell Dahda as to Los Rovell Dahda. (Johnson, Richard) **(Co-defendants Roosevelt Rico Dahda and David Essman have joined in this motion.) (Entered: 01/02/2014)**
		* * * * *
02/06/2014	1179	Consolidated RESPONSE TO MOTIONS by USA as to Los Rovell Dahda, Roosevelt Rico Dahda, Justin Cherif Pickel, David James Essman, Amos Moses Hurst, Jean Francois Quintin, John Paul McMillan, Erin M. Keller, Richard W. Smith, Jr. re: 1110 MOTION To Allow Case Agent/Investigator To Not Be Subject to Sequestration Rule, 1139 MOTION for Hearing To Identify and Determine Admissibility of Co-Conspirator Statements and Request for Pre-Trial Hearing, 1140 MOTION to Suppress Evidence, 1098 MOTION to Exclude Co-Conspirators' Statements, 1109 MOTION for Disclosure Of Exculpatory Evidence, 1096 MOTION for Bill of Particulars, 1090 MOTION for a James Hearing, 1104 MOTION For Ade-

DATE	NO.	PROCEEDINGS
		quate Court Facilities, 1145 MOTION to Suppress the Contents of Unlawfully Intercepted Communications, 1094 MOTION in Limine To Exclude Evidence By Non- Testifying Co-Defendants, 1143 MOTION to Suppress Contents of Communications Intercepted Pursuant to Orders Insufficient on Their Face, 1115 MOTION to Dismiss IndictmentMOTION (Request) for Evidentiary Hearing, 1106 MOTION for Disclosure Of Grand Jury Transcripts, 1102 MOTION for Disclosure Of Confidential Informants, 1108 MOTION to Exclude Bruton Evidence, 1100 MOTION For An Order Requiring The Government To Give Notice Of Its Intent To Offer Rule 404(b) Evidence, 1092 MOTION for Disclosure Of Co-Conspirator Statements. (Maag, Jared) (Entered: 02/06/2014)
		* * * * *
04/02/2014	1251	REPORT AND RECOMMENDATIONS as to Los Rovell Dahda's 1143 MOTION to Suppress Contents of Communications Intercepted Pursuant to Orders Insufficient on Their Face. Objections to R&R due by 4/16/2014. Signed by Magistate Judge James P. O'Hara

DATE	NO.	PROCEEDINGS
		on 4/2/2014. (ah) (Entered: 04/02/2014)
		* * * * *
04/16/2014	1336	ORDER - Defendant Los Dahda's Objections To The Magistrate's Reports And Recommendations 1327 filed April 15, 2014 be and hereby are OVERRULED and Defendant Justin C. Pickel's Objections to Report And Recommendations 1328 be and hereby ADOPTS Magistrate Judge James P. O'Hara's 1249, 1250 and 1251 Report and Recommendations and overrules 1143, 1145 and 1140 Motions to Suppress. Signed by Chief Judge Kathryn H. Vratil on 4/16/2014. (ck) (Entered: 4/16/2014)
		* * * * *
07/23/2014	1433	JURY VERDICT as to Los Rovell Dahda (1) - Found Guilty on Counts 1s, 26s, 31s, 36s, 38s-39s, 41s-42s, 43s, 45s-46s, 49s, 73s, 85s, and 88s, and Not Guilty on Counts 3s, 23s, 30s, 32s, 34s, 37s, and 48s of the 462 Superseding Indictment; as to Roosevelt Rico Dahda (2) - Found Guilty on Counts 1s, 42s, 43s, 45s, 49s, 53s, 55s, 56s, 70s, and 73s, and Not Guilty on Counts 47s, and 52s of the 462 Superseding Indictment; and as to Justin Cherif Pickel (4) -

DATE	NO.	PROCEEDINGS
		Found Guilty on Counts 1s and 70s, and Not Guilty on Counts 37s, 43s, and 73s of the 462 Superseding Indictment. (mg) (Entered: 7/25/2014)
		* * * * *
10/05/2015	2076	JUDGMENT as to Los Rovell Dahda (1) - Counts: 1s, 26s, 31s, 36s, 38s-39s, 41s-42s, 43s, 45s-46s, 49s, 73s, 85s, 88s - The defendant sentenced to 189 months. This term of imprisonment consists of 189 months on each Counts 1 and 31; 60 months on each of Counts 26, 36, 43, 49, 73, 85 and 88; and 48 months on each of Counts 38, 39, 41, 42, 45 and 46, all counts to be served concurrently. Upon release from imprisonment, the defendant shall be on supervised release for a term of 10 years. This term of supervised release consists of 10 years on each of Counts 1, 26, 36, 43, 49, 73, 85 and 88; 3 years on Count 31; and 1 year on each of Counts 38, 39, 41, 42, 45 and 46, all counts to be served concurrently. $1,500 special assessment. $16,985,250.00 fine. Counts 23s, 30s, 32s, 34s, 37s, 3s, 48s – Defendant Signed by District Judge Kathryn H. Vratil on 10/5/15. (kao) (Entered: 10/05/2015)

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

No. 12 cr 20083-02

UNITED STATES, Plaintiff,

v.

ROOSEVELT RICO DAHDA, Defendant.

DOCKET ENTRIES

DATE	NO.	PROCEEDINGS
06/11/2012	1	SEALED COMPLAINT as to Los Rovell Dahda (1), Roosevelt Rico Dahda (2), Sadie Jolynn Brown (3), Justin Cherif Pickel (4), David James Essman (5), Amos Moses Hurst (6), Phillip Villereal Alarcon (7), Jeffery David Paiva (8), Mark Lee Romero (9), Samuel Villeareal, III (10), Peter Park (11), Wayne Suhan Swift (12), Charles Thomas Kreisler (13), James Michael Soderling (14), Simon Andrew Tyson (15), Trent Jordan Percival (16), Chad William Pollard (17), Jason Marcus Hansen (18), Daniel Mark Sieber (19), Justin Jerome Mercer

DATE	NO.	PROCEEDINGS
		(20), Jacob Paul Forbes (21), Chad Eugene Bauman (22), Carey Lynn Willming (23), Michael Shane Witt (24), Stephen Mallsion Rector (25). (Sealed User KAO) Modified on 6/13/2012 to unseal per Notice of Arrest. (kao) [2:12-mj-08126-JPO] (Entered: 06/12/2012)
		* * * * *
07/11/2012	192	SEALED INDICTMENT (unsealed upon arrest) as to Los Rovell Dahda (1) on counts 1, 3, 22, 25, 29-30, 31, 33, 35, 36-37, 38, 40-41, 42, 44-45, 47, 48, 72, 84, and 87; as to Roosevelt Rico Dahda (2) on counts 1, 41, 42, 44, 46, 48, 51-52, 54, 55, 69, and 72; as to Sadie Jolynn Brown (3) on counts 1, 42, 52-54, and 55; as to Justin Cherif Pickel (4) on counts 1, 29, 36, 42, 69, and 72; as to David James Essman (5) on counts 1 and 37; as to Amos Moses Hurst (6) on counts 1, 40, and 42; as to Phillip Villereal Alarcon (7) on counts 1, 38, 42, and 45; as to Jeffery David Paiva (8) on counts 1 and 42; as to Mark Lee Romero (9) on counts 1, 46, 53, and 55; as to Samuel Villeareal, III (10) on counts 1, 16, and 51; as to Peter Park (11) on counts 1, 42, 48, 63-66, 67, 68, 70, 71, 73, 74, 75, 77, 78, 79-80, 81, 82-83, 84-85, 86, 87,

DATE	NO.	PROCEEDINGS
		88-91, 93, and 100; as to Wayne Suhan Swift (12) on counts 1, 42, 63, 67, 77, 84, 86, and 87; as to Charles Thomas Kreisler (13) on counts 1, 66, 67, and 77; as to James Michael Soderling (14) on counts 1, 26, 27, 28, 67, 70, 77, 84, 85, and 93; as to Simon Andrew Tyson (15) on counts 1 and 65; as to Trent Jordan Percival (16) on counts 1, 78, 79-80, 83, 95, and 96; as to Chad William Pollard (17) on counts 1, 79-80, and 83; as to Jason Marcus Hansen (18) on counts 1, 75, and 89; as to Daniel Mark Sieber (19) on counts 1, 74, 88, 90-91, and 97; as to Justin Jerome Mercer (20) on counts 1, 80, 81, and 82; as to Jacob Paul Forbes (21) on counts 1, 59, and 64; as to Chad Eugene Bauman (22) on counts 1, 2, 3, 4-6, 7, 8, 9, 10, 11, 15, 17, 19, 20, 22-23, 24, 32, 34, 39, 43, 49, 50, 56, 57, 58, 60-61, 62, 76, 92, 94, and 101; as to Carey Lynn Willming (23) on counts 1, 2, 12-14, and 57; as to Michael Shane Witt (24) on counts 1 and 58; as to Stephen Mallsion Rector (25) on counts 1, 2, 18, and 56; as to Michael J. Berry (26) on counts 1, 21, and 98; as to Adam Christiansen (27) on count 1; as to Aaron C. Gunderson (28) on counts 1, 92, and 101; as to Nathan Wallace (29) on counts 1, 42, 47, 48, and 99; as to

DATE	NO.	PROCEEDINGS
		Ryan Kearns (30) on counts 1 and 9; as to Karl Havener (31) on counts 1 and 9; as to Damien J. Mick (32) on counts 1, 62, and 94; as to Joshua Simpson (33) on counts 1 and 10; as to Sarah Soderling (34) on counts 1 and 93; and as to Elizabeth Dominique Watson (35) on counts 1, 71, and 73. (mg) (Counts Corrected as to Defendants Swift (12) and Soderling (14) on 7/12/2012. (mg)) (Entered: 07/12/2012)
		* * * * *
10/31/2012	462	SEALED SUPERSEDING INDICTMENT (unsealed upon arrest) as to Los Rovell Dahda (1) on counts 1s, 3s, 23s, 26s, 30s-31s, 32s, 34s, 36s, 37s-39s, 41s-42s, 43s, 45s-46s, 48s, 49s, 73s, 85s, and 88s; as to Roosevelt Rico Dahda (2) on counts 1s, 42s, 43s, 45s, 47s, 49s, 52s-53s, 55s, 56s, 70s, and 73s; as to Sadie Jolynn Brown (3) on counts 1s, 43s, 53s-55s, and 56s; as to Justin Cherif Pickel (4) on counts 1s, 30s, 37s, 43s, 70s, and 73s; as to David James Essman (5) on counts 1s and 38s; as to Amos Moses Hurst (6) on counts 1s, 41s, and 43s; as to Phillip Villereal Alarcon (7) on counts 1s, 39s, 43s, and 46s; as to Jeffery David Paiva (8) on counts 1s and 43s; as to Mark Lee Romero (9) on counts 1s,

DATE	NO.	PROCEEDINGS
		47s, 54s, and 56s; as to Samuel Villeareal, III (10) on counts 1s, 17s, and 52s; as to Peter Park (11) on counts 1s, 43s, 49s, 64s- 67s, 68s, 69s, 71s, 72s, 74s, 75s, 76s, 78s, 79s, 80s, 81s, 82s, 83s, 84s, 85s, 86s, 87s, 88s, 89s, 90s, 91s-92s, 94s, and 101s; as to Wayne Suhan Swift (12) on counts 1s, 43s, 64s, 68s, 78s, 85s, 87s, and 88s; as to Charles Thomas Kreisler (13) on counts 1s, 67s, 68s, and 78s; as to James Michael Soderling (14) on counts 1s, 27s, 28s, 29s, 68s, 71s, 78s, 85s, 86s, and 94s; as to Simon Andrew Tyson (15) on counts 1s and 66s; as to Trent Jordan Percival (16) on counts 1s, 79s, 80s, 81s, 84s, 96s, and 97s; as to Chad William Pollard (17) on counts 1s, 80s, 81s, and 84s; as to Jason Marcus Hansen (18) on counts 1s, 76s, and 90s; as to Daniel Mark Sieber (19) on counts 1s, 75s, 89s, 91s-92s, and 98s; as to Justin Jerome Mercer (20) on counts 1s, 81s, 82s, and 83s; as to Jacob Paul Forbes (21) on counts 1s, 60s, and 65s; as to Chad Eugene Bauman (22) on counts 1s, 2s, 3s, 5s-6s, 7s-8s, 9s, 10s, 11s, 12s, 16s, 18s, 20s, 21s, 23s, 24s, 25s, 33s, 35s, 40s, 44s, 50s, 51s, 57s, 58s, 59s, 61s-62s, 63s, 77s, 93s, 95s, and 102s; as to Carey Lynn Willming (23) on counts 1s,

DATE	NO.	PROCEEDINGS
		2s, 13s-15s, and 58s; as to Michael Shane Witt (24) on counts 1s and 59s; as to Stephen Mallsion Rector (25) on counts 1s, 2s, 19s, and 57s; as to Michael J. Berry (26) on counts 1s, 22s, and 99s; as to Adam Christiansen (27) on count 1s; as to Aaron C. Gunderson (28) on counts 1s, 93s, and 102s; as to Nathan Wallace (29) on counts 1s, 43s, 48s, 49s, and 100s; as to Ryan Kearns (30) on counts 1s and 10s; as to Karl Havener (31) on counts 1s and 10s; as to Damien J. Mick (32) on counts 1s, 63s, and 95s; as to Joshua Simpson (33) on counts 1s and 11s; as to Sarah Soderling (34) on counts 1s and 94s; as to Elizabeth Dominique Watson (35) on counts 1s, 72s, and 74s; as to Jean Francois Quintin (36) on counts 1 and 4; as to Steven Stegall (37) on counts 1 and 103; as to David G. Hale (38) on count 1; as to Henry McCusker (39) on count 1; as to John Paul McMillan (40) on counts 1, 27, and 94; as to Erin M. Keller (41) on count 1; as to Jeffrey Wall (42) on count 1; and as to Richard W. Smith, Jr. (43) on count 1. (mg) (Entered: 11/06/2012)

* * * * *

DATE	NO.	PROCEEDINGS
01/02/2014	1143	MOTION to Suppress Contents of Communications Intercepted Pursuant to Orders Insufficient on Their Face by Los Rovell Dahda as to Los Rovell Dahda. (Johnson, Richard) **(Co-defendants Roosevelt Rico Dahda and David Essman have joined in this motion.) (Entered: 01/02/2014)**
		* * * * *
02/06/2014	1179	Consolidated RESPONSE TO MOTIONS by USA as to Los Rovell Dahda, Roosevelt Rico Dahda, Justin Cherif Pickel, David James Essman, Amos Moses Hurst, Jean Francois Quintin, John Paul McMillan, Erin M. Keller, Richard W. Smith, Jr. re: 1110 MOTION To Allow Case Agent/Investigator To Not Be Subject to Sequestration Rule, 1139 MOTION for Hearing To Identify and Determine Admissibility of Co-Conspirator Statements and Request for Pre-Trial Hearing, 1140 MOTION to Suppress Evidence, 1098 MOTION to Exclude Co-Conspirators' Statements, 1109 MOTION for Disclosure Of Exculpatory Evidence, 1096 MOTION for Bill of Particulars, 1090 MOTION for a James Hearing, 1104 MOTION For Ade-

DATE	NO.	PROCEEDINGS
		quate Court Facilities, 1145 MOTION to Suppress the Contents of Unlawfully Intercepted Communications, 1094 MOTION in Limine To Exclude Evidence By Non- Testifying Co-Defendants, 1143 MOTION to Suppress Contents of Communications Intercepted Pursuant to Orders Insufficient on Their Face, 1115 MOTION to Dismiss IndictmentMOTION (Request) for Evidentiary Hearing, 1106 MOTION for Disclosure Of Grand Jury Transcripts, 1102 MOTION for Disclosure Of Confidential Informants, 1108 MOTION to Exclude Bruton Evidence, 1100 MOTION For An Order Requiring The Government To Give Notice Of Its Intent To Offer Rule 404(b) Evidence, 1092 MOTION for Disclosure Of Co-Conspirator Statements. (Maag, Jared) (Entered: 02/06/2014)
		* * * * *
04/02/2014	1251	REPORT AND RECOMMENDATIONS as to Los Rovell Dahda's 1143 MOTION to Suppress Contents of Communications Intercepted Pursuant to Orders Insufficient on Their Face. Objections to R&R due by 4/16/2014. Signed by Magistate Judge James P. O'Hara

DATE	NO.	PROCEEDINGS
		on 4/2/2014. (ah) (Entered: 04/02/2014)
		* * * * *
04/16/2014	1336	ORDER - Defendant Los Dahda's Objections To The Magistrate's Reports And Recommendations 1327 filed April 15, 2014 be and hereby are OVERRULED and Defendant Justin C. Pickel's Objections to Report And Recommendations 1328 be and hereby are OVERRULED. The court hereby ADOPTS Magistrate Judge James P. O'Hara's 1249, 1250 and 1251 Report and Recommendations and overrules 1143, 1145 and 1140 Motions to Suppress. Signed by Chief Judge Kathryn H. Vratil on 4/16/2014. (ck) (Entered: 04/16/2014)
		* * * * *
07/23/2014	1433	JURY VERDICT as to Los Rovell Dahda (1) - Found Guilty on Counts 1s, 26s, 31s, 36s, 38s-39s, 41s-42s, 43s, 45s-46s, 49s, 73s, 85s, and 88s, and Not Guilty on Counts 3s, 23s, 30s, 32s, 34s, 37s, and 48s of the 462 Superseding Indictment; as to Roosevelt Rico Dahda (2) - Found Guilty on Counts 1s, 42s, 43s, 45s, 49s, 53s, 55s, 56s, 70s, and 73s, and Not Guilty on Counts 47s, and 52s of the 462 Superseding Indictment;

DATE	NO.	PROCEEDINGS
		and as to Justin Cherif Pickel (4) - Found Guilty on Counts 1s and 70s, and Not Guilty on Counts 37s, 43s, and 73s of the 462 Superseding Indictment. (mg) (Entered: 07/25/2014)
		* * * * *
10/06/2015	2087	JUDGMENT as to Roosevelt Rico Dahda (2), Count(s) 1, 41, 42, 44, 46, 48, 51-52, 54, 55, 69, 72, Dismissed. Count(s) 1s, Defendant sentenced to 201 months imprisonment. Cts. 1 and 56: 201 months per count; Cts. 42, 45, 53, 55, and 70: 48 months per count; Cts. 43, 49, and 73: 120 months per count (all counts to run concurrently). 120 months supervised release. Cts. 1, 43, 49, 56, and 73: 10 years per count; Cts. 42, 45, 53, 55, and 70: 1 year per count (all concurrent). $1000 special assessment.; Count(s) 42s, Defendant sentenced to 201 months imprisonment. Cts. 1 and 56: 201 months per count; Cts. 42, 45, 53, 55, and 70: 48 months per count; Cts. 43, 49, and 73: 120 months per count (all counts to run concurrently). 120 months supervised release. Cts. 1, 43, 49, 56, and 73: 10 years per count; Cts. 42, 45, 53, 55, and 70: 1 year per count (all concurrent). $1000 special

DATE	NO.	PROCEEDINGS
		assessment.; Count(s) 43s, Defendant sentenced to 201 months imprisonment. Cts. 1 and 56: 201 months per count; Cts. 42, 45, 53, 55, and 70: 48 months per count; Cts. 43, 49, and 73: 120 months per count (all counts to run concurrently). 120 months supervised release. Cts. 1, 43, 49, 56, and 73: 10 years per count; Cts. 42, 45, 53, 55, and 70: 1 year per count (all concurrent). $1000 special assessment.; Count(s) 45s, Defendant sentenced to 201 months imprisonment. Cts. 1 and 56: 201 months per count; Cts. 42, 45, 53, 55, and 70: 48 months per count; Cts. 43, 49, and 73: 120 months per count (all counts to run concurrently). 120 months supervised release. Cts. 1, 43, 49, 56, and 73: 10 years per count; Cts. 42, 45, 53, 55, and 70: 1 year per count (all concurrent). $1000 special assessment.; Count(s) 47s, 52s, Defendant found not guilty.; Count(s) 49s, Defendant sentenced to 201 months imprisonment. Cts. 1 and 56: 201 months per count; Cts. 42, 45, 53, 55, and 70: 48 months per count; Cts. 43, 49, and 73: 120 months per count (all counts to run concurrently). 120 months supervised release. Cts. 1, 43, 49, 56, and 73: 10 years per count; Cts. 42, 45, 53, 55,

DATE	NO.	PROCEEDINGS
		and 70: 1 year per count (all concurrent). $1000 special assessment.; Count(s) 53s, Defendant sentenced to 201 months imprisonment. Cts. 1 and 56: 201 months per count; Cts. 42, 45, 53, 55, and 70: 48 months per count; Cts. 43, 49, and 73: 120 months per count (all counts to run concurrently). 120 months supervised release. Cts. 1, 43, 49, 56, and 73: 10 years per count; Cts. 42, 45, 53, 55, and 70: 1 year per count (all concurrent). $1000 special assessment.; Count(s) 55s, Defendant sentenced to 201 months imprisonment. Cts. 1 and 56: 201 months per count; Cts. 42, 45, 53, 55, and 70: 48 months per count; Cts. 43, 49, and 73: 120 months per count (all counts to run concurrently). 120 months supervised release. Cts. 1, 43, 49, 56, and 73: 10 years per count; Cts. 42, 45, 53, 55, and 70: 1 year per count (all concurrent). $1000 special assessment.; Count(s) 56s, Defendant sentenced to 201 months imprisonment. Cts. 1 and 56: 201 months per count; Cts. 42, 45, 53, 55, and 70: 48 months per count; Cts. 43, 49, and 73: 120 months per count (all counts to run concurrently). 120 months supervised release. Cts. 1, 43, 49, 56, and 73: 10 years per count; Cts. 42, 45, 53, 55,

DATE	NO.	PROCEEDINGS
		and 70: 1 year per count (all concurrent). $1000 special assessment.; Count(s) 70s, Defendant sentenced to 201 months imprisonment. Cts. 1 and 56: 201 months per count; Cts. 42, 45, 53, 55, and 70: 48 months per count; Cts. 43, 49, and 73: 120 months per count (all counts to run concurrently). 120 months supervised release. Cts. 1, 43, 49, 56, and 73: 10 years per count; Cts. 42, 45, 53, 55, and 70: 1 year per count (all concurrent). $1000 special assessment.; Count(s) 73s, Defendant sentenced to 201 months imprisonment. Cts. 1 and 56: 201 months per count; Cts. 42, 45, 53, 55, and 70: 48 months per count; Cts. 43, 49, and 73: 120 months per count (all counts to run concurrently). 120 months supervised release. Cts. 1, 43, 49, 56, and 73: 10 years per count; Cts. 42, 45, 53, 55, and 70: 1 year per count (all concurrent). $1000 special assessment. Signed by District Judge Kathryn H. Vratil on 10/6/15. (mm) (Entered: 10/06/2015)

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF KANSAS

Case No. 12 - 20083

UNITED STATES OF AMERICA

v.

LOS DAHDA,

Defendant.

TRANSCRIPT OF MOTION TO SUPPRESS
PROCEEDINGS BEFORE
HONORABLE JAMES P. O'HARA
ON MARCH 25 & 26, 2014

March 25, 2014

Rebecca S. Ryder, CSR, CCR, RMR
United States Court Reporter Telephone: 913 735-2334

[DIRECT EXAMINATION OF DET. MIKE MCATEE]

* * *

[23] Q. And so with those, I guess, things lacking, was there application made to United States Federal Judge Carlos Murguia for a series of wiretap authorizations on a number of targeted phones?

[24] A. Yes.

Q. Do you remember when those authorizations started, Detective McAtee?

A. I believe the first authorization started on January 4 of 2012.

Q. And with regards to the information that was supplied to the Court, did that include all of the background information that had been amassed up to that point in time?

A. Yes.

Q. Did you tell Judge Murguia about all of that information?

A. Yes.

Q. And in connection with the wiretap authorizations, tell us, if you would, walk through what individuals'

phones were targeted during the intercepted time periods and at what point that ended up stopping, not each phone, but just kind of walk us through from January forward.

A. There was a total of 11 phones, target phones, that we applied for and received authorization for from Judge Murguia. The first phones, target phone one and two, were cellular telephones utilized by Los Dahda. Then we did target phone number three, which was a cellular telephone that was initially usual by [25] Sadie Brown. Part of the investigation we learned early on that -- we went to -- target phone number two was dropped or they stopped using it right before or right after we had authorization to intercept that phone, so we went to and received information on target phone number four, which was a phone utilized a lot by Los Dahda. Then we had target phone number five, which was a cellular phone that was utilized by Roosevelt Rico Dahda. Target phone number six was a cell phone that was used by Roosevelt Rico Dahda, which we later learned in the investigation was given to Sadie Brown. Target phone number seven was a cell phone used by Phillip Alarcon in California.

Q. And how was he identified?

A. Phillip Alarcon was identified as part of this investigation initially through GPS locations that we obtained off of Los Dahda's cellular telephone when he was in California. We identified him through surveillance through agencies in California, and then after we were able to, we had court authorizations to intercept. We had officers and detectives

go out to California. Phillip Alarcon was identified out there. That's how we identified him

Q. Okay. What other phones?

A. That was seven. Eight was a cellular telephone that [26] was identified as one used by Roosevelt Rico Dahda. Cellular telephones nine and ten were target phones that were utilized by Peter Park, and then cellular telephone or target telephone number eleven was utilized by Phillip Alarcon. We received -- from January 4 -- in the span -- I believe it was June 6 or right around the first of June is when we -- all our authorizations to monitor telephones expired, and we stopped at that time.

Q. Were there a few of those phones that were extensions authorized for beyond the initial 30-day time period?

A. Yes.

Rebecca S. Ryder, CSR, CCR, RMR
United States Court Reporter Telephone: 913 735-2334

[DIRECT EXAMINATION OF DET. MIKE MCATEE]

* * *

[340] Q. (By Ms.Morehead) Detective McAtee, as we look at this chart, it says the first authorization was on January 4,2012, involving target phones one and two?

A. Yes.

Q. And that target phone two was -- there's a date of [341] 1/12 of 12. What does that denote?

A. On the first 15-day report, that is -- indicated that it was the first and final report, so that phone was stopped monitoring on the 12th and/or the ability to monitor it. So it was ended.

Q. Okay. Were there even any interceptions that occurred on that targeted phone?

A. No.

Q. And so was there any necessity for continuing that you saw as an investigator to continue on that beyond January 12 of 2012?

A. No.

Q. And there was 30 – day authorization on target phone one, which my calculation would indicate that would put that into February?

A. Yes.

Q. Yet this initial wiretap application terminated on January 20 and was resumed by a second application for target telephone one, three, and four?

A. Yes.

Q. Is that right? And so the 30-day time period would begin anew? This was in essence an extension on one, although the entire 30 days had not yet expired. Would you agree with that?

A. Yes.

[342] Q. And so again likewise as the time period was ticking away on these particular phones were there 15- and 30-day reports submitted to Judge Murguia?

A. Yes.

Q. Target telephone one, you identified that was Los Dahda?

A. Yes.

Q. What about target phone three here?

A. Target phone three was a phone that we identified belonging to Sadie Brown.

Q. It says here on 12/4/12 it was dropped?

A. Yes.

Q. What do you mean by that?

A. She stopped using it. She, being defendant Sadie Brown. As part of the investigation we learned that she obtained another phone. I believe it would have been January 17, but she continued to use this phone for about three days, four days as kind of an overlap. And then she stopped using it, so then in filing the first 15-day report was also the final, so we stopped monitoring it.

Q. So I'm just going to put this document up here, which is actually Government's Exhibit 32, which would you agree with me is in fact target phone number three?

A. Yes.

[343] Q. And so this was identified as the first and final 15-day report and indicated that we were not -- there was no necessity to continue monitoring that phone?

A. Yes.

Q. And so this idea that we were up on all these phones for this entire period of time, that's just not correct. Would you agree with that?

A. Correct.

Q. And if there was no pertinent or relevant interception or a phone was no longer being used, would you notify the Court of that and terminate making any attempts to intercept it?

A. Yes.

Q. Tell the Court, if you would, what a pertinent call is versus a non-pertinent call.

A. As part of the minimization process, and then what we were taught, a pertinent phone call would be a phone call that provided information in furtherance of the investigation, either, you know, direct criminal activity, a meeting, some of the calls that we had like on target telephone one would simply be "contact your other" or "hit me up on your other," which we deemed to be pertinent because the individual was directing at that time Los Dahda or Los Dahda would direct them to use a different phone. So that [344] could be pertinent information. Financial information of how money was being spent was deemed to be pertinent so we could identify assets and/or to try to establish how much narcotics were being distributed. So pertinent phone calls we used as a way to further the investigation or gather evidence.

Q. Okay. And so on this first and final report for target phone three do you advise the Court about the progress of the investigation along the way?

A. Yes.

Q. Do you identify, for instance, here on page 3 for each target phone in that 15-day time period or the time period within which you are reporting how many calls are intercepted, how many you determined to be pertinent or non-pertinent?

A. Yes.

Q. And then you described that within that document if there are pertinent phone calls that you will provide the Court with a daily sample of calls that were intercepted, assuming a pertinent call was received on that particular target phone during that reported period?

A. Yes.

Q. And so, for instance, here on page 4, would this be an example of that on January 21 where this pertinent [345] call or pertinent text message was referenced to the Court?

A. Yes.

Q. And then if there were no calls intercepted, like on page 6, was this a time period where it was kind of determined that there wasn't any usage at all of this phone?

A. Yes.

Q. Now, the minute it appears the phone isn't being used any more, do you immediately notify the Court that there's no longer a necessity on that phone?

A. No.

Q. Why?

A. An individual may have lost their phone; they may have turned it off; or they just may have not used it that day.

Q. Okay. And so do you give it a reasonable amount of time to see if they are going to resume using the

phone if there's an identification of discontinued use?

A. Yes.

Q. And in this case with target phone three after several days you notified, would you agree with me, Judge Murguia and discontinued -- indicated that that phone would no longer be the subject of any [346] interception, that there was no longer necessity?

A. Yes.

Q. Okay. And so as this time period is continuing on -- we talked about target phone three. What about target phone number four? Who did you identify that as being connected to?

A. Target phone number four was a cellular telephone used by Los Rovell Dahda.

Q. Okay. In this situation where you pick up target phone three and four, in order to get authorization, do you have to have a dirty call somewhere along the way that the phone is being used for illegal activity before the wiretap is even authorized?

A. Yes.

Q. And so target phone four it looks like in this time period was approximately -- one and three here was approximately a 30-day time period?

A. Yes.

Q. And if there's a situation where it's running up on a weekend or something, might you cut that short a day or two if you're going to get an extension?

A. Yes.

Q. And so the next grouping of phones that I see here are target phones one, four, and five. And so extensions were obtained for one and four at this [347] stage?

A. Yes.

Q. But target phone five was added in on that grouping?

A. Yes, it was.

Q. And who was target phone five associated with?

A. Roosevelt Dahda.

Q. And target phone four likewise in this intercepting 30-day time period, there's an indication that it was dropped?

A. Yes.

Q. So likewise, as you done previously in the 15-, 30-day report requirements, did you notify Judge Murguia of that?

A. Yes, I did.

Q. That there was no longer a necessity to intercept that phone?

A. Yes.

Q. But you would continue on with one and five?

A. Yes.

Q. And then just by way of timing it looks like there were some other phones down here. Target phone six was picked up on March 12. Who was that phone associated with?

A. Target phone six was initially associated with Roosevelt Rico Dahda, but as we began monitoring [348] about three days into the authorization, three to six days, I believe, then Sadie Brown began using that cellular phone.

Q. We saw up here on target phone three that it was initially believed to be Sadie Brown?

A. Yes.

Q. But was dropped.

A. Yes.

Q. And then target phone four was dropped, which was being utilized by Roosevelt Dahda?

A. Los Dahda.

Q. Los Dahda, sorry. And then there was this switching of users on target phone five – or, I'm sorry, target phone six between Roosevelt Dahda and Sadie Brown?

A. Yes.

Q. Based upon your training, knowledge, and experience is that sort of activity uncommon in drug traffic activity?

A. No.

Q. Why?

A. What we learned through this investigation and through training, sometimes people will pass different phones off because customers have those phones, and then also large drug trafficking [349] organizations or groups, the way I like to look at this, or any other drug trafficking group, it's a business, and the ability to have Sadie Brown, who was working for Los Dahda and Roosevelt Dahda, to contact customers, he provided her a cellular telephone where he could service his customers.

Q. Okay. And so target phone six was picked up. What about target phone seven?

A. Target phone seven -- and I see that I left the two off of that. I apologize.

Q. I added it for you.

A. Thank you. Target phone seven was a cellular telephone used by Phillip Alarcon.

Q. Okay. And at some point target phones one and five expired?

A. Yes.

Q. That was April 21, 2012?

A. Yes.

Q. And that was -- target phone one was a phone of Los Dahda?

A. Yes.

Q. And target phone five was the phone that was associated with?

A. Roosevelt Dahda.

Q. Okay. And why were the phones stopped at that [350] juncture?

A. We believed the necessity had run out for monitoring those phones. As we progressed through the investigation, we had learned that Los Dahda's cellular phone, TT1, Roosevelt Dahda's cellular phone, TT5, were cellular phones that – I think I characterized them as an anchor phone, that they had that number for long periods of time, but they also obtained prepaid phones, which were cellular phone TT2, TT4, TT6, TT8 and phones of that nature that weren't specifically through a service provider that you would have to provide information to. What we learned through the investigation, that the dirty phone calls or more evidentiary phone calls in the furtherance of the investigation, those conversations were occurring on the phones that weren't in their names or subscribed to them.

Q. And then in April there was the addition of target phone eight and nine and ten, and what were those – who were those phones associated with?

A. TT8, or target phone eight, was a phone utilized by Roosevelt Rico Dahda. Target phone nine and target phone ten were cellular telephones utilized by Peter Park.

Q. What about target phone 11, the last one?

[351] A. Target telephone 11 was utilized by Phillip Alarcon.

Q. And as this – as phones were being added or subtracted, did this prove to be a pretty labor-intensive investigation?

A. Yes.

Q. And each of these wiretap authorizations of each of these target telephones, were they in fact signed by Judge Murguia?

A. Yes.

Q. And for the record, Judge Murguia is a United States District Court Judge with the District of Kansas?

A. Yes.

Q. Which has the jurisdictional boundaries of the state of Kansas. Are you aware of that?

A. Yes.

Q. And in connection with the authorizations that you obtained, were you involved in the monitoring of the intercepted phone calls?

A. Yes.

Q. And tell the Court where those interceptions occurred at?

A. The interceptions that occurred were at the DEA headquarters in Overland Park, Kansas.

Q. Okay. And again that is in the District of Kansas?

A. Yes.

[352] Q. And is that then -- was that then designated as the listening post for this investigation?

A. Yes.

Q. And the phone calls that come in, the officers that were monitoring them, were they physically at that location?

A. Yes.

Q. And were there any of the phones that -- did the listening post in Overland Park, Kansas, did it remain constant throughout this investigationconcerning all of these targeted phones?

A. All but one.

Q. And I want to talk about that one, but the listening post itself, did it have the ability to listen to allof these targeted telephones?

A. Yes, it did.

Q. And the way that DEA is comprised in these investigations, is it your understanding there's typically a primary listening post?

A. Yes.

Q. And was there in fact, though, on one of the targeted telephones a secondary listening post utilized?

A. Yes.

Q. And which target phone was that?

A. Target telephone seven.

[353] Q. And what was that -- where was that secondary listening post?

A. The secondary listening post was in St. Louis, Missouri.

Q. And what target phone was that on?

A. Target telephone seven, utilized by Phillip Alarcon.

Q. And why was -- and was that at DEA headquarters in St. Louis?

A. Yes.

Q. Did you actually have occasion to be there and visit that location?

A. Yes, I did.

Q. And what was the reason that target phone seven was given a secondary listening post?

A. Based upon Phillip Alarcon's belief – there was a belief that he may be a Spanish speaker and that the translators that DEA utilizes are headquartered there in St. Louis. The decision was made to have it monitored, it being TT7, in St. Louis to monitor that phone so the translations could be done there.

Q. And did you know where Phillip Alarcon was located physically?

A. Yes.

Q. Where was that?

A. California.

[354] Q. And despite the fact that the secondary listening post in St. Louis was utilized, was there still a listening post in the District of Kansas?

A. Yes.

Q. And at any point in time could law enforcement in Kansas listen to Phillip Alarcon's phone calls that were occurring simultaneous to the listening post at DEA in St. Louis?

A. Yes.

Q. And as his phone calls began being intercepted, were there in fact any Spanish-speaking conversations that were intercepted?

A. No, I do not believe so.

Q. With regards to that target phone number seven, because I think you said telephone 11 was also Phillip Alarcon's?

A. Correct.

Q. Was the primary listening post in Kansas utilized specifically not only for target phone 11 but all the other target telephones as well?

A. Yes.

March 26, 2014

Rebecca S. Ryder, CSR, CCR, RMR
United States Court Reporter Telephone: 913 735-2334

[CROSS EXAMINATION OF DET. MIKE MCATEE]

* * *

[449] Q. When you intercept a phone call -- you received an order that authorized you to conduct an intercept?

A. Yes.

Q. And you understood that the act of intercepting a phone call occurs where the person is with their phone that you're listening to, right, or did you not go over this when you did it?

[450] A. I don't understand the question, what you're trying to say. I guess -- go ahead. I'll do my best.

Q. You were authorized under the orders to conduct -- if the phones were to leave the District of Kansas, the interception's outside of the district?

A. Yes.

Q. And you understood at that point that the intercept means you're intercepting at your listening room; right?

A. Correct.

Q. And you're also intercepting where the person is, using their phone, because they are making the communication right there; right?

A. No. I believe you're intercepting I'm receiving the information from the wire room or the room that -- or listening post.

Q. Okay. Because the order said that if the phones-leave the jurisdiction that you can intercept outside of the District of Kansas, you were authorized to move your listening room outside the state?

A. I don't know if we were authorized to do it. We were able to listen to target phones if they left or target phones that were in the state of Kansas. And someone outside the state of Kansas was calling them, I just know that we were monitoring them in Overland [451] Park, Kansas.

Q. And there were no limitations as to where you placed that listening room?

A. I believe the limitation has to be within the District of the State of Kansas because it's an investigation being done by DEA here in Kansas -- that that's why we were listening here -- and then the judge who authorized the monitoring, Judge Murguia, has responsibilities for the State of Kansas.

Q. But you listened to target telephone seven in St. Louis?

A. Target telephone seven, there was the ability to listen to it in St. Louis and in Kansas.

Q. Well, there is an ability to listen to it anywhere in the country at a DEA headquarters, isn't there?

A. I don't believe so.

Q. Can't you route these calls to anywhere you ask the router to route it to?

A. That would be a DEA question. I don't know.

Q. Nonetheless, the listening to target telephone seven occurred in St. Louis?

A. It was monitored by speakers in St. Louis.

Rebecca S. Ryder, CSR, CCR, RMR
United States Court Reporter Telephone: 913 735-2334

[501] MR. JOHNSON: Thank you, Judge. I want to take up the first motion, which is the legal one. When we look at the statute, we know that there's a limitation on the courts and where they can -- and the statute is pretty clear on the territorial limitations of the Court. The Court cannot issue an order authorizing interception out of the District of Kansas except in the case of a mobile interception device. And in this case in each one of the orders the Court authorized interception outside of the District of Kansas. That is absolutely clear on its face that the order permits that. In fact, because of that, one of the intercepts, target telephone seven, occurred exclusively outside the District of Kansas. I think when we look at the wiretaps where the listening room was in Kansas, the government has confused our motion. There are multiple grounds for relief under Title III, avenues for relief: that the government violated the order in conducting the intercept, that the interceptions were unlawful, or [502] that the order was insufficient on its the face.

Regarding all but target telephone seven, our motion is that the orders themselves were insufficient on their face even if the government conducted the intercepts from the District of Kansas. I'll make the additional motion now, Judge, and I'll make it orally regarding target telephone seven, that not only was the

intercept on target telephone seven conducted pursuant to an insufficient order, but it was also unlawful because it occurred entirely outside the District of Kansas. So there would be a second reason for relief on target telephone seven because of the unlawfulness of it occurring outside the jurisdiction.

THE COURT: Again, target telephone seven is essentially moot, since the government concedes it's not going to use any of the evidence.

MR. JOHNSON: The issue is moot. The reason I'm bringing it up is to illustrate the point that the orders were authorizing the DEA to move this operation around the country. There were no constraints that limited it to the state of Kansas. Because the order exceeded the statutory authority of the judge and is insufficient on its face, the rule under Title III is clear that all the evidence needs [503] to be suppressed.

THE COURT: Well, I understand your argument in terms of construction of the language within the four corners of the statute.

MR. JOHNSON: Yes, sir.

THE COURT: Query?

MR. JOHNSON: Yes, sir.

THE COURT: Has any circuit court of appeals held that your construction of the statute as applied to the facts here is correct?

MR. JOHNSON: Almost.

THE COURT: Okay. Which one would that be?

MR. JOHNSON: That would be the Fifth Circuit. And I cited it in our motion. If you asked me that last September, I would say yes, because the Fifth Circuit had entered the ruling that our interpretation of the statute was correct. The Fifth Circuit then withdrew their opinion on its own motion and reissued it. There were two grounds for relief for the defendant in that case, and the Court went ahead and granted that defendant relief under Title III for a failure to minimize a phone call and then relegated the discussion regarding territorial jurisdiction to a concurrence. Within that concurrence, Judge, if you read it, Judge DeMoss [504] writes -- I don't quote exactly.

THE COURT: In the concurring opinion.

MR. JOHNSON: In the concurring opinion.

THE COURT: In the unpublished opinion.

MR. JOHNSON: It was published originally and when they withdrew it -- I think it was --

THE COURT: Okay. Go ahead.

MR. JOHNSON: He says, I don't care if there is a split in the circuits. I would publish it. I would make this part of our opinion in chief. The Tenth Circuit has never addressed the issue. I think that ultimately there's been very, very little litigation on the issue. You're not going to find a lot out there. The Seventh Circuit has dealt with the issue. I cited that case as well.

THE COURT: The Seventh but not the Second; correct?

MR. JOHNSON: The Seventh Circuit. It's Judge Posner the Seventh Circuit. And I think that Judge Posner's opinion was wrongly decided. I think if we follow the logic of it it does not follow our rules of statutory construction. I think that the Seventh Circuit took a leap. I think if this Court is to make a decision on it, assuming how the Tenth Circuit might rule on that issue if it were to get up [505] to it, I don't think the Tenth Circuit would follow the Seventh. It's illogical. And especially given the interpretation that the Fifth Circuit almost gave -- I know it doesn't have the authority of law, the Fifth Circuit, but it certainly provides guidance for this Court and --

THE COURT: Is there anything in Tenth Circuit precedent that makes you believe that if confronted with this issue -- and I suspect some day it will be -- that the Tenth would be more likely to follow the Fifth than the Seventh?

MR. JOHNSON: Not one way or the other, other than the proximate time of the Fifth Circuit opinion being just last year, and that the Seventh Circuit opinion is somewhat old. But other than that I would not have -- I would not know one way or another how that would come out.

THE COURT: How have district courts dealt with this issue post-Fifth Circuit?

MR. JOHNSON: I don't know. I haven't found anything on it. If you have, you're a better researcher than I am.

THE COURT: Well, somebody in my office may be but . . .

MR. JOHNSON: Send them my way. I don't [506] know, Judge. I really don't know how district courts have dealt with it. I don't know if anyone has raised it before a district court yet. The Fifth Circuit opinion, the original one, was only issued in I think August 2012, so the opportunity – this is a two-year process for us to get here today, so the opportunity for litigation based upon the Fifth Circuit is – has not really run full circle yet, I think, for cases that have been pending.

THE COURT: Given that, save target telephone seven, which is essentially moot, all of the interceptions were actually conducted in Kansas.

MR. JOHNSON: Uh-huh.

THE COURT: You still feel that the Court should strike down these wiretap orders as invalid on their face?

MR. JOHNSON: Yes.

THE COURT: Because they permitted interception outside of Kansas?

MR. JOHNSON: Absolutely.

THE COURT: Why?

MR. JOHNSON: For the very reason that the Court orders needed to prevent what happened in this case, which is that the statute says the courts need to maintain close scrutiny and keep the [507] investigations within its jurisdiction. That's the statutory purpose of it. It needs to constrain those investigations to

its jurisdiction, and if it does not do so, it gives investigators the freedom to leave, which is exactly what happened in this case, and it resulted in an unlawful wiretap because the Court order permitted an unlawful wiretap. And so the reason why you would invalidate it, suppress the wiretaps because the order is insufficient on its face, is for that very reason, because the government was not constrained by order and was free to do things that violated the statute because it was permitted by court order.

THE COURT: How, if at all, was your client hurt by that?

MR. JOHNSON: Well, I don't think that we need to show prejudice. Prejudice is not an element under the statute. We don't need to show that there was any prejudice to it. But if there was the potential for prejudice, it would have been if Judge Murguia had, during target telephone seven, had concerns in his overrsight of it, it was no longer down the street, it was across in another state. But prejudice is not a requisite showing. It's not an element of it. Once we have shown that the order is [508] insufficient on its face and that the order regards an element of the statute that is one of the substantive core concerns of Congress, the Court doesn't need to find any prejudice; it doesn't even need to find that the operation was otherwise lawful. There are three avenues for relief. This court has to suppress if it finds that the order was insufficient on its face and that insufficiency was related to one of the substantive concerns of Congress. I would relate to the Court that it was one of the substantive concerns of Congress. If you look at -- it's not a -- it would be under 2518, subsection 12. And what this is dealing with is an issue that is not at issue in our case, but I'm

bringing it up to show the intent of Congress and why this is one of its substantive concerns. What these provisions are dealing with, subsection 11 and subsection 12, are the applications -- or applications for a wiretap when the location of the tap facilities are not yet known. And what subsection 12 says is you're not allowed to start the tap until you know where it's all going to be, even if you -- even if it's impractical at the time of the application, until you know where it is, you can't start. So it's obviously a concern of Congress that [509] the location that the operation takes place in is going to be important. And the only other place within the statute that the location shows its importance, according to Congress, is in the jurisdiction of the court. It's obviously something that they wish to limit the ability of the judge, of a judge, of a court, to enter of orders in this case. And if it substantively limits the ability of a court to issue a wiretap order, then that is in fact what -- that is the threshold –

THE COURT: Well, Mr. Johnson, is it defendant Los Dahda's position that the intrastate limitation on the wiretap would apply not only to the listening post but also the location of the phones, or just the former?

MR. JOHNSON: It depends upon – ultimately I think in practice it would make most sense just to say that one or the other needs to be within the district, because that's the definition of interception. So the interception has to take place within the district.

THE COURT: Your questions of Detective McAtee this afternoon seemed to be trying to establish that interception was occurring technologically illegally not only at the listening [510] post but also at the point of the telephone; true?

MR. JOHNSON: And that's the law.

THE COURT: If that's the law, under your construction of this staute, wouldn't that mean that a wiretap issued by a federal judge in Kansas would be ineffective to surveil a cell phone that travels 2 miles across the Missouri river into the Western District of Missouri?

MR. JOHNSON: Not if the listening post was ordered to remain in the state of Kansas. That's the way that that – and it's a simple thing.

THE COURT: Right. But even if the listening post is in Kansas, under your view, if the interception occurs at the point of the phone as well and if the phone travels from someone's residence in Lawrence to Kansas City, Missouri, wouldn't that also invalidate the tap?

MR. JOHNSON: No. If the order had a proper jurisdictional limitation and one foot stayed in the state and the phone left, that would be proper. But that's not what we have here. What we have here is that the order is insufficient on its face because it doesn't have those territorial limitations.

THE COURT: Maybe I am losing where you're [511] going. How would this wiretap order have been written properly in your view, assuming that law enforcement were able to lay an appropriate foundation for the need for the wiretap based on exhaustion of other investigative tools?

MR. JOHNSON: I think one of two ways, one of which is practical and the other impractical. The impractical way is to say that the interceptions must end

if the phones leave the jurisdiction, the listening room is out the jurisdiction, which would require investigators to maintain probably GPS pings and whatnot. It would be very difficult to track the target phone.

THE COURT: It would make the tapped phone useless, wouldn't it?

MR. JOHNSON: No. Because the alternate way of doing it is to simply order the listening post to remain within the territorial jurisdiction of the Court. And that's easy. That's completely practical. And it insures that the listening agency remains nearby the Court, and for the reasons that we cited in our motion why that would be a primary concern.

THE COURT: Under your view of the statute, so long as the wiretap order required the listening [512] post to remain in the physical confines of the issuing state, it would be permissible under that order to tap the phones wherever those phones physically traveled in the United States?

MR. JOHNSON: Yes, that would. But there would have to be the proper territorial limitations. Likewise if the tap was -- say it was a physical tap at a house inside a room or a physical tap on a land line; then and that was presented by the government in an application, we're going to tap that fixed location, then there would be no need for -- to require the government to maintain a listening post in the jurisdiction because the other prong of jurisdiction, where the tap is and where the listening post is, in this case the tap would be within the jurisdiction and it would be guaranteed within the jurisdiction because it's fixed, it's

not a mobile phone. In the case of mobile phones it becomes more complex.

THE COURT: What is the proper territorial jurisdiction limitation on the mobile phone, putting aside the listening post or assuming that the listening post is in the same state where the judge issues the tap?

MR. JOHNSON: It can go anywhere as long as [513] the listening room remains in the jurisdiction, or the listening room can go anywhere as long as the tap remains in the jurisdiction[.] Does that make sense? It's federal law, so it probably doesn't.

THE COURT: Well, it would be imprudent for me to respond to that question.

MR. JOHNSON: Your Honor, I think that you're asking important questions. This statute was written in 1967, maybe, something like that. We're 30 years out from cell phones at the time this was written. I don't know if Congress has ever made amendments to it, but they haven't, and this is the law, and this is what it says -- the statute says the Court is required to do if there are -- if the Court has authorized interceptions outside of its territorial jurisdiction.

THE COURT: Okay. I just want to make sure I'm understanding your position. I'm not agreeing or disagreeing with it right now, but I want to understand where you're going on this.

MR. JOHNSON: Yeah. It's tough to make heads or tails sometimes with this, but I think that nonetheless there had to have been in the orders a territorial restriction on the government, and absent that it becomes insufficient on its face, and this [514] Court is

required by law under the statute, if that happens, to suppress.

THE COURT: Let me ask you another question. We're some distance away from this, but away from this, but would there be any constitutional impediment from your standpoint of Congress modifying the statute so that the listening post could be in Overland Park, Kansas, if that were convenient, or in Kansas City, Missouri, if that were more convenient?

MR. JOHNSON: I don't think there would be a Fourth Amendment limitation on that if it was a federal judge. I think you might have jurisdictional questions if it was a state court judge authorizing taps in Nebraska or something like that, but probably not a Fourth Amendment issue, which is what -- I think what we would be getting at, yes, Congress could make changes, but they haven't.

THE COURT: I appreciate your clarification. Did you have anything else on the first motion?

MR. JOHNSON: No, Judge.

Rebecca S. Ryder, CSR, CCR, RMR
United States Court Reporter Telephone: 913 735-2334

[529] THE COURT: Okay. Thank you. Ms. Morehead, do you wish to argue the motions?

MS. MOREHEAD: I do, Judge. Can you give me just one -- I was trying to get exhibit numbers down here. I think I can be fairly quick.

First of all, Judge, the first motion argues that the orders are facially invalid, and those are Exhibits 3, 6, 9, 12, 15, 18, 21, 24, 27, and 30; and the argument lodged by Mr. Johnson is that the orders are facially invalid because they did not limit the government to the confines of the territorial jurisdiction within our district where Judge Murguia was assigned. That is incorrect. If you look at the orders, each and every one of these orders references -- and I just have highlighted Government's Exhibit 3 to start with, but the same language is fashioned in every single order where Judge Murguia specifically said pursuant to Title 18 U.S.C. Section 2518(3). That is precisely the statutory authority, which Mr. Johnson complains [530] Judge Murguia did not restrict the government. Judge Murguia did. Judge Murguia indicated, I expect you to follow the statute, this statute, and the restrictions that it imposes in the implementation of the wiretap. There's no requirement, based upon any case that Mr. Johnson has cited, that any magic language or special language has to be included. But Judge

Murguia did reference specifically the statutory authority under which we were governed. It did not give us a free-for-all to set up a listening post anywhere at all that we wanted to.

THE COURT: Is it correct though that none of these orders state that the listening post must be in Kansas?

MS. MOREHEAD: Well, it references 2518(3).

THE COURT: You're talking about page 4 of Exhibit 3?

MS. MOREHEAD: Yes, which tells us the territorial restrictions. If you read the statute, the statute doesn't say that the listening post has to be in this district; the statute doesn't say anything like that. That is an interpretation that has now evolved as a result of the initial North decision that Mr. Johnson wishes he could cite to the Court but that which does not now exist. As a [531] result of that, it's come to the attention of courts, of government officials about those specific restrictions. Again, like you mentioned, there's nothing to indicate exactly what will happen.

I argue, Judge, first of all, there were restrictions placed and, No. 2, even though there was no specific language that indicated that, that didn't occur in this case as it applies to the phones, aside from target phone seven, which the government is not presenting any evidence on. We're not, again, as you indicate, and as we indicated in our motion, not conceding any legality issues as it arises on that phone. But for the evidence that we will rely upon in evidence in this case, this is a nonissue, it truly is. The listening posts were

here in Kansas. Whether they could have been listened to somewhere else is irrelevant if it didn't happen, and also because Judge Murguia specifically limited us in this case by the language that he implemented in each and every order that was fashioned in this case. So that would be my response on the first motion.

THE COURT: Ms. Morehead, is it the government's position that under the language that you cite on page 4 of Exhibit 3, and evidently appears in all of the subsequent orders, that [532] provided the target phone was transported outside of Kansas there would be no legal impediment to the listening post being conducted, or maintained, I should say, in a state other than Kansas?

MS. MOREHEAD: Well, I don't know because that was never contemplated in this case.

THE COURT: What I'm referring to is the language –

MS. MOREHEAD: It didn't occur.

THE COURT: I know it didn't occur, but the language that I think you're referring to says, "Pursuant to Title 18 U.S.C. Section 2518(3), it is further ordered that in the event that target telephone one and target telephone two are transmitted outside of the territorial jurisdiction of the Court, interception may take place in any other jurisdiction within the United States, end of quote.

MS. MOREHEAD: And I'm taking that – and the way we have always interpreted that is if the phone goes somewhere else, we still get to listen to that

phone, not we're going to pick up the listening post and move it hither and yon. I have never seen that happen. I have never known of that happening.

THE COURT: I guess my question is, would [533] there be any statutory impediment to moving the listening post and conducting the interception outside of Kansas in your view?

MS. MOREHEAD: As long as the listening post was where the phone was when it was being intercepted, or one of the calls. So let's say, arguably, I guess, if the phone was transported to California and this order were in place, arguably the listening post could also be in California because the phone is there. I don't know because I have honestly never done research about moving a listening post in the middle of an investigation. I have never known of that occurring. I really think that would be impractical to accomplish because of the logistical parameters around that, just the manpower. There aren't listening posts everywhere that we can just establish easily.

THE COURT: Are you aware of any cases beyond the Fifth Circuit and Seventh Circuit cases that I was visiting with Mr. Johnson about that speak to this issue?

MS. MOREHEAD: Not directly. I mean, there have been other issues that have came up about matters contained in an order, you know, erroneous language and the like, but I don't think anything [534] directly related to where the listening post is or where the listening of the calls occur.

THE COURT: Okay.

UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

[Filed 10/05/15]

Case Number: 2:12CR20083 - 001

UNITED STATES OF AMERICA

v.

LOS ROVELL DAHDA

JUDGMENT IN A CRIMINAL CASE

USM Number: 10900-031

Defendant's Attorney: Richard W. Johnson

THE DEFENDANT:

☐ pleaded guilty to count(s):

☐ pleaded nolo contendere to count(s) which was accepted by the court.

☒ was found guilty on count(s) 1, 26, 31, 36, 38, 39, 41, 42, 43, 45, 46, 49, 73, 85, and 88 of the Superseding Indictment after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count

See Next Page

The defendant is sentenced as provided in pages 1 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☒ The defendant has been found not guilty on count(s) 3, 23, 30, 32, 34, 37 and 48 of the Superseding Indictment.

☒ All other charging documents, under this case number as such pertain to this defendant are dismissed on the motion of the United States.

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States attorney of material changes in economic circumstances.

09/13/2015
Date of Imposition of Judgment

s/ Kathryn H. Vratil
Signature of Judge

Honorable Kathryn H. Vratil, U.S. District Judge
Name & Title of Judge

10/5/15
Date

ADDITIONAL COUNTS OF CONVICTION

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C. § 841(a)(1), (b)(1)(A)(ii), (b)(1)(A)(vii), 846 and 856	Conspiracy to Possess With Intent to Distribute and to Distribute Five Kilograms or More of Cocaine, to Manufacture, to	07/30/2012	1

	Possess With Intent to Distribute and to Distribute 1,000 Kilograms or More of Marijuana, and Maintaining Drug-Involved Premises, a Class A felony		
21 U.S.C. §§ 841(a)(1), (b)(1)(D) and 18 U.S.C. § 2	Distribution of Marijuana, a Class D felony	11/11/2011 01/06/2012	26 36
21 U.S.C. § 856(a)(1) and (a)(2) and 18 U.S.C. § 2	Maintaining a Drug-Involved Premises, a Class C felony	11/16/2011	31
21 U.S.C. § 843(b)	Use of a Communication Facility to Facilitate a Drug Trafficking Offense, a Class E felony	01/19/2012 01/24/2012 01/28/2012 01/29/2012 02/02/2012 02/02/2012	38 39 41 42 45 46
21 U.S.C. §§ 841(a)(1), (b)(1)(D) and 18 U.S.C. § 2	Possession With Intent to Distribute Marijuana, a Class D felony	02/13/2012 02/21/2012 05/17/2012	43 49 85
21 U.S.C. §§ 841(a)(1), (b)(1)(D),	Attempted Possession With Intent to Distribute	04/26/2012 05/22/2012	73 88

846 and 18 U.S.C. § 2	Marijuana, a Class D felony		

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 189 months.

This term of imprisonment consists of 189 months on each Counts 1 and 31; 60 months on each of Counts 26, 36, 43, 49, 73, 85 and 88; and 48 months on each of Counts 38, 39, 41, 42, 45 and 46, all counts to be served concurrently

☒ The Court makes the following recommendations to the Bureau of Prisons: That the defendant be considered for placement in the Western Region, and that he be considered for participation in an advanced occupational education program.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district.

☐ at __ on __

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before __ on __

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Officer.

RETURN

I have executed this judgment as follows:

_____

_____

_____

Defendant delivered on _____ to _____ at _____, with a certified copy of this judgment.

_____

UNITED STATES MARSHAL

By _____

Deputy U.S. Marshal

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 10 years.

This term of supervised release consists of 10 years on each of Counts 1, 26, 36, 43, 49, 73, 85 and 88; 3 years on Count 31; and 1 year on each of Counts 38, 39, 41, 42, 45 and 46, all counts to be served concurrently

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not unlawfully possess a controlled substance.

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

☐ The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check if applicable)*

☒ The defendant is prohibited from possessing or purchasing a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check if applicable)*

☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check if applicable)*

☐ The defendant shall register as a sex offender, and keep the registration current, in each jurisdiction where the defendant resides, where the defendant is an employee, and where the defendant is a student. For initial registration purposes only, the defendant shall also register in the jurisdiction in which convicted, if such jurisdiction is different from the jurisdiction of residence. Registration shall occur not later than 3 business days after being sentenced, if the defendant is not sentenced to a term of imprisonment. The defendant shall, not later than 3 business days after each change in name, residence, employment, or student status, appear in person in at least one jurisdiction in which the defendant is registered and inform that jurisdiction of all changes in the information required. *(Check if applicable)*

☐ The defendant shall participate in an approved program for domestic violence. *(Check if applicable)*

If this judgment imposes a fine or restitution, it is to be a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without permission of the court or probation officer;

2) the defendant shall report to the probation officer in a manner and frequency directed by the court or the probation officer;

3) the defendant shall answer truthfully all inquiries by the probation officer and follow instructions of the probation officer;

4) the defendant shall support his or her dependents and meet other family responsibilities;

5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training or other acceptable reasons;

6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;

7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substances or any paraphernalia related to any controlled substances, except as prescribed by a physician;

8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;

10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;

11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;

13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant is prohibited from possessing or purchasing a firearm, ammunition, destructive device, or other dangerous weapon.

2. The defendant shall submit his/her person, house, residence, vehicle(s), papers, business or place of employment and any property under the defendant's control to a search, conducted by the United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

CRIMINAL MONETARY PENALTIES

The defendant shall pay the total criminal monetary penalties under the Schedule of Payments set forth in this Judgment.

	Assessment	Fine	Restitution
Totals:	$1,500	$16,985,250.00	None

☐ The determination of restitution is deferred until ___. *An Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant shall make restitution (including community restitution) to the following payees in the amounts listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
Totals:	$	$	

☐ Restitution amount ordered pursuant to plea agreement $___ .

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* Findings for the total amount of losses are required under Chapters 109A, 110, 110A and 113A of Title for offenses committed on or after September 13, 1994, but before April 23, 1996.

☒ The defendant shall pay interest on any fine or restitution of more than $2,500, unless the fine or restitution is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options set forth in this Judgment may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest, and it is ordered that:

☐ the interest requirement is waived for the ❑ fine and/or ❑ restitution.

☐ the interest requirement for the ❑ fine and/or ❑ restitution is modified as follows:

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A ☐ Lump sum payment of $__ due immediately, balance due

☐ not later than ___, or

☐ in accordance with ❑ C, ❑ D, ❑ E, or ❑ F below; or

B ☒ Payment to begin immediately (may be combined with ❑ C, ❑ D, or ☒ F below); or

C ☐ Payment in monthly installments of not less than 5% of the defendant's monthly gross household income over a period of ____ years to commence ____ days after the date of this judgment; or

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount Joint and Several Amount and corresponding payee, if appropriate.

Case Number (Including Defendant Number)	Defendant Name	Joint and Several Amount

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States. Payments against any money judgment ordered as part of a forfeiture order should be made payable to the United States of America, c/o United States Attorney, Attn: Asset Forfeiture Unit, 1200 Epic Center, 301 N. Main, Wichita, Kansas 67202.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

[Filed 11/13/15]

Case Number: 2:12CR20083 - 002

UNITED STATES OF AMERICA

v.

ROOSEVELT RICO DAHDA

AMENDED JUDGMENT IN A CRIMINAL CASE

USM Number: 10899-031

Defendant's Attorney: Mark L. Bennett Jr. and Roger Gordon Luedke

Date of Original Judgment: 10/06/2015
(Or Date of Last Amended Judgment)

Reason for Amendment:

[ ] Correction of Sentence on Remand (18 U.S.C 3742(f)(1) and (2))

[ ] Reduction of Sentence for Changed Circumstances (Fed. R.Crim.P.35(b))

[ ] Correction of Sentence by Sentencing Court (Fed. R.Crim.P.35(a)

[X] Correction of Sentence for Clerical Mistake (Fed. R.Crim.P.36)

[ ] Modification of Supervision Conditions (18 U.S.C § 3563(c) or 3583(e))

[ ] Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons 18 U.S.C. §3582(c)(1))

[ ] Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) to the Sentencing Guidelines (18 U.S.C. § 3582(c)(2))

[ ] Direct Motion to District Court Pursuant to

[ ] 28 U.S.C. § 2255, or

[ ] 18 U.S.C. § 3559(c)(7)

[ ] Modification of Restitution Order (18 U.S.C. § 3664)

THE DEFENDANT:

☐ pleaded guilty to count(s): ____.

☐ pleaded nolo contendere to count(s) ____ which was accepted by the court.

☒ was found guilty on count(s) 1, 42, 43, 45, 49, 53, 55, 56, 70, 73 of the Superseding Indictment after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count

See Next Page

The defendant is sentenced as provided in pages 1 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☒ The defendant has been found not guilty on count(s) 47, 52 of the Superseding Indictment.

☐ Count(s) ____ is dismissed on the motion of the United States.

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States attorney of material changes in economic circumstances.

*11/13/15
Date of Imposition of Judgment

s/ Kathryn H. Vratil
Signature of Judge

Honorable Kathryn H. Vratil, U.S. District Judge
Name & Title of Judge

November 13, 2015
Date

ADDITIONAL COUNTS OF CONVICTION

Title & Section	Nature of Offense	Offense Ended	Count
*21 U.S.C. §§ 841(a)(1), 841(b)(1)(A) and 846	Conspiracy to Possess With Intent to Distribute and to Distribute Five Kilograms or More of Cocaine, to Manufacture, to Possess With Intent to Distribute and to Distribute 1,000 Kilograms or More of Marijuana; and	07/30/2012	1

	Maintaining Drug-Involved Premises, a Class C felony		
21 U.S.C. § 843(b)	Use of a Communication Facility to Facilitate a Drug Trafficking Offense, a Class E felony	01/29/2012 02/02/2012 03/16/2012 03/18/2012 04/24/2012	42 45 53 55 70
21 U.S.C. §§ 841(a)(1), and 841 (b)(1)(D)	Possession With Intent to Distribute Marijuana, a Class D felony	02/13/2012 02/21/2012	43 49
21 U.S.C. §§ 841(a)(1), 841(b)(1)(D), and 860(a)	Possession With Intent to Distribute and Distributed Marijuana Within 1,000 feet of a Playground, a Class D felony	03/18/2012	56
21 U.S.C. §§ 841(a)(1), 841(b)(1)(D) and 846	Attempted Possession With Intent to Distribute Marijuana, a Class D felony	04/26/2012	73

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 201 months.

Cts. 1 and 56: 201 months per count; Cts. 42, 45, 53, 55, and 70: 48 months per count; Cts. 43, 49, and 73: 120

months per count (all counts to run concurrently).

☒ *The Court makes the following recommendations to the Bureau of Prisons: Placement in Victorville, California, or any other detention facility in the Western Region of the BOP, that offers advanced occupational education programs.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district.

- ☐ at ___ on ___.
- ☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

- ☐ before ___ on ___.
- ☐ as notified by the United States Marshal.
- ☐ as notified by the Probation or Pretrial Services Officer.

RETURN

I have executed this judgment as follows:

_____

_____

_____

Defendant delivered on _____ to _____ at _____, with a certified copy of this judgment.

_____

UNITED STATES MARSHAL

By _____

Deputy U.S. Marshal

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 10 years.

Cts. 1, 43, 49, 56, and 73: 10 years per count; Cts. 42, 45, 53, 55, and 70: 1 year per count (all concurrent)

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not unlawfully possess a controlled substance.

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

☐ The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check if applicable)*

☒ The defendant is prohibited from possessing or purchasing a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check if applicable)*

☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check if applicable)*

☐ The defendant shall register as a sex offender, and keep the registration current, in each jurisdiction where the defendant resides, where the defendant

is an employee, and where the defendant is a student. For initial registration purposes only, the defendant shall also register in the jurisdiction in which convicted, if such jurisdiction is different from the jurisdiction of residence. Registration shall occur not later than 3 business days after being sentenced, if the defendant is not sentenced to a term of imprisonment. The defendant shall, not later than 3 business days after each change in name, residence, employment, or student status, appear in person in at least one jurisdiction in which the defendant is registered and inform that jurisdiction of all changes in the information required. *(Check if applicable)*

☐ The defendant shall participate in an approved program for domestic violence. *(Check if applicable)*

If this judgment imposes a fine or restitution, it is to be a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

14) the defendant shall not leave the judicial district without permission of the court or probation officer;

15) the defendant shall report to the probation officer in a manner and frequency directed by the court or the probation officer;

16) the defendant shall answer truthfully all inquiries by the probation officer and follow instructions of the probation officer;

17) the defendant shall support his or her dependents and meet other family responsibilities;

18) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training or other acceptable reasons;

19) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;

20) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substances or any paraphernalia related to any controlled substances, except as prescribed by a physician;

21) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

22) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;

23) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;

24) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

25) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;

26) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned

CRIMINAL MONETARY PENALTIES

The defendant shall pay the total criminal monetary penalties under the Schedule of Payments set forth in this Judgment.

	Assessment	Fine	Restitution
Totals:	$1,000	Waive	None

☐ The determination of restitution is deferred until ___. *An Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant shall make restitution (including community restitution) to the following payees in the amounts listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
Totals:	$	$	

☐ Restitution amount ordered pursuant to plea agreement $ ___ .

☐ The defendant shall pay interest on any fine or restitution of more than $2,500, unless the fine or restitution is paid in full before the fifteenth day after

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* Findings for the total amount of losses are required under Chapters 109A, 110, 110A and 113A of Title for offenses committed on or after September 13, 1994, but before April 23, 1996.

the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options set forth in this Judgment may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest, and it is ordered that:

☐ the interest requirement is waived for the ❑ fine and/or ❑ restitution.

☐ the interest requirement for the ❑ fine and/or ❑ restitution is modified as follows:

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A ☐ Lump sum payment of $ due immediately, balance due

☐ not later than ___, or

☐ in accordance with ❑ C, ❑ D, ❑ E, or ❑ F below; or

B ☒ Payment to begin immediately (may be combined with ❑ C, ❑ D, or ☒ F below); or

C ☐ Payment in monthly installments of not less than 5% of the defendant's monthly gross household income over a period of ____ years to commence ____ days after the date of this judgment; or

D ☐ Payment of not less than 10% of the funds deposited each month into the inmate's trust fund account and monthly installments of not less than

5% of the defendant's monthly gross household income over a period of ___ years, to commence ___ days after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within ___ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☒ Special instructions regarding the payment of criminal monetary penalties:

If restitution is ordered, the Clerk, U.S. District Court, may hold and accumulate restitution payments, without distribution, until the amount accumulated is such that the minimum distribution to any restitution victim will not be less than $25.

Payments should be made to Clerk, U.S. District Court, U.S. Courthouse - Room 259, 500 State Avenue, Kansas City, Kansas 66101.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount Joint and

Several Amount and corresponding payee, if appropriate.

Case Number (Including Defendant Number)	Defendant Name	Joint and Several Amount

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☒ The Preliminary Order of Forfeiture is hereby made final as to this defendant and the defendant shall forfeit the defendant's interest in said property to the United States. Payments against any money judgement ordered as part of a forfeiture order should be made payable to the United States of America, c/o United States Attorney, Attn: Asset Forfeiture Unit, 1200 Epic Center, 301 N. Main, Wichita, Kansas 67202.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.